

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>NOUJOUD ACHKAR and,</b>	:	
<b>JOSEPH ACHKAR,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiffs,</b>	:	
	:	
<b>vs.</b>	:	
	:	
<b>WISCONSIN CHEESE GROUP, LLC</b>	:	
<b>d/b/a LA MORENITA BRAND and</b>	:	
<b>WALMART, INC.</b>	:	
<b>Defendants.</b>	:	<b>JURY TRIAL DEMANDED</b>

**PLAINTIFFS' PRE-TRIAL MEMORANDUM**

**I. NATURE OF ACTION**

Plaintiffs, Noujoud Achkar and Joseph Achkar, filed this suit under Product Liability/Strict Liability, Breach of Express or Implied Warranty. Jurisdiction is premised under Diversity of Citizenship, 28 U.S.C § 1332.

**II. STATEMENT OF FACTS**

On or about May 1, 2017,<sup>1</sup> Plaintiff, Noujoud Achkar, purchased a cheese product called La Morenita Queso Fresco at Walmart and consumed the product on the same day. After spending a restless night, Mrs. Achkar, became ill and was taken to Lehigh Valley Hospital in Allentown, Pennsylvania where she fell into unconsciousness for over two weeks. During the course of the hospitalization, due to the severity of the situation, the hospital referred the matter to Pennsylvania Department of Health to conduct an investigation.

While Plaintiff was still in the hospital, the Department of Health came to her house and confiscated all the food products in the refrigerator for testing. After testing everything, they

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<sup>1</sup> The date of purchase is subject to some dispute, and is going to be explored at the Walmart's corporate designee's deposition in order to establish the precise date of purchase.

determined that the cheese product eaten by Mrs. Achkar, and manufactured by Defendant, Wisconsin Cheese Group, LLC d/b/a La Morenita Brand, was contaminated with listeria.

As a result of the listeria poisoning, Plaintiff, remained hospitalized at Lehigh Valley Hospital from May 2, 2017 through June 6, 2017. Even upon discharge from the hospital, she required intensive home care and daily intravenous antibiotics for four weeks.

Defendant, Wisconsin Cheese Group, LLC d/b/a La Morenita Brand manufactured and distributed the tainted cheese using Defendant, Walmart, Inc., as a distributor. The cheese sold by Defendant, Walmart, Inc., is expected to reach and does reach the user or consumer without substantial change in the condition in which it is sold. Walmart designed and controlled the distribution process from obtaining the product from the supplier and selling it to consumers. The product was defective because there are not safe levels of listeria in food for public consumption.

It is Plaintiffs' contention that this is a strict liability case. Listeria is only caused by a bacteria associated with manufacturing food. It is not caused by a purchaser's neglect such as a failure to refrigerate, as those temperatures would not kill the bacteria; listeria contamination is known as the modern plague because it must be controlled at the factory level, and once it is out, it is out. Listeria infection can and does cause serious consequences including death. In this case, Plaintiff's brain was infected with the bacteria which further complicated her treatment and recovery.

### **III. DAMAGES**

Plaintiff is a Medicare beneficiary and therefore there is a lien on the medical bills that it paid for her treatment. The other elements of her damages, the pain and suffering, and the fear of having a near-death illness are not subject to precise calculation.

**IV. WITNESS LIST**

- A. Plaintiff, Noujoud Achkar, liability and damage witness;
- B. Plaintiff, Joseph Achkar, liability and damage witness;
- C. Fadi Achkar, Plaintiffs' son who observed his mother's grave illness;
- D. Manal Achkar, Plaintiffs' daughter who observed her mother's grave illness;
- E. Hannah Achar, Plaintiffs' daughter-in-law who observed Plaintiff's grave illness;
- F. Yehia Y. Mishririki, M.D., Plaintiff's family physician who was her in follow up from the hospital;
- G. Mohamed J Qasing, M.D., attending physician who saw Plaintiff in the hospital;
- H. Carla Rossi, M.D., attending physician who saw Plaintiff in the hospital;
- I. Dongxilxsiang, Xia, M.D., physician with PA Department of Health;
- J. Kriisten Baracelli, M.D., attending physician who saw Plaintiff in the hospital;
- K. Jared Seiders, Department of Health investigator concerning listeria;
- L. Jahangir Khan; M.D., attending physician who saw Plaintiff in the hospital;
- M. Kerry Pollard, Department of Health investigator concerning listeria;
- N. Dale Loosnegger: Wisconsin Cheese employee;
- O. Michelle Riese: Wisconsin Cheese employee;
- P. Professor Michael Sulzinski, Ph.D.: Plaintiffs' expert on listeria;
- Q. Corporate designee from WalMart concerning sale of product

V. **EXHIBITS**

- P-1: Report/Affidavit of Michael A. Sulzinski, Ph.D. (with Curriculum Vitae and attached Appendixes and Exhibits)
- P-2:4 Photographs of La Morenita Queso Fresco Packaging (previously marked P-1 , P-2, P-3 and P-4) {Also D-2}
- P-3: PA Dept. of Health Bureau of Laboratories report dated May 19, 2017 (previously marked P-5)
- P-4: PA Dept. of Health Bureau of Laboratories report dated May 11, 2017 (previously marked P-6)
- P-5: PA Dept. of Health Bureau of Laboratories receipt dated May 10, 2017 (previously marked P-7)
- P-6: PA Dept. of Health Bureau "General Continuation Sheet-2 pages (previously marked P-9)
- P-7: PA Dept. of Health Bureau of Laboratories report dated May 12, 2017-2 pages (previously marked p- 10)
- P-8: API Listeria /Biomerieux test results dated May 18, 2017 (previously marked P11)
- P-9: Wisconsin Cheese Group Product Usage Report dated January 18, 2017 (previously marked P- 16)
- P-10: Wisconsin Cheese Group invoice # 1 19888 dated February 2, 2017 (previously marked P-18) {Also D-6}
- P-11: Wisconsin Cheese Group Picking Ticket dated January 27, 2017 (previously marked P-19) {Also D-7}
- P-12: Wisconsin Cheese Group Pallet 880 Report dated January 19, 2017 (previously marked POO) {Also 1)-8}
- P-13•. Wisconsin Cheese Group Pallet 2535 Report dated January 19, 2017 (previously marked POI) {Also D-8}
- P-14: Wisconsin Cheese Group Pallet 879 Report dated January 19, 2017 (previously marked P-22)
- P-15: LM 240Z Fresco pos Qty- Whitehall, PA- 4 pages (Walmart) {Also D-9}

P-16: U.S. Food and Drug Administration Establishment Inspection Report dated August 16, 2017 {Also D-5}

P-17: Wisconsin Cheese Group 2.6.3.06 Product Withdrawal & Recall Program (previously marked P-24)

P-18: Deposition Transcript of Dale Losenegger with Exhibits (Already in possession of Defendants)

P-19: Deposition Transcript of Michelle Riese with Exhibits (Already in possession of Defendants)

POO: Deposition Transcript of Fadi Achkar with Exhibits (Already in possession of Defendants)

P-21: Deposition Transcript of Joseph Achkar (Already in possession of Defendants)

P-22: Deposition Transcript of Noujoud Achkar with Exhibits (Already in possession of Defendants).

P-23: Deposition Transcript/Videotape of Michael A. Sulzinski, Ph.D. (if Dr. Sulzinski does not testify at trial)

P-24: PA Dept. of Health redacted email dated July 18, 2017 regarding retest of string cheese on July 10-12, 2017 (Already in possession of Defendants)

P-25: PA Dept. of Health redacted email dated July 12 2017 regarding retest of string cheese on July 10-12, 2017 (Already in possession of Defendants)

P-26: Taber's 2005 Medical Dictionary entries on bacteremia, incubation, Listeria, Listeria monocytogenes, listeriosis, and Occam's razor—8 pages

P-27•. PA Dept. of Health redacted email dated May 23, 2017 (Already in possession of Defendants)

P-28: PA Dept. of Health redacted email dated August 3, 2017 (Already in possession of Defendants)

P-29: Requests for Admissions with answers from Defendant, Wisconsin Cheese Group (Already in possession of Defendants)

P-30•. Requests for Admissions with answers from Defendant, Walmart. (Already in possession of Defendants)

P-31: Defendant, Wisconsin Cheese Group's Answers to Plaintiffs' Interrogatories (Already in possession of Defendants)

P-32: Defendant, Walmart's Answers to Plaintiffs' Interrogatories (Already in possession of Defendants)

P-33: Defendant, Walmart's Answers to Plaintiffs' Request For Production of Documents (Already in possession of Defendants)

P-34: Defendant, Walmart's Answers to Wisconsin Cheese Group's Interrogatories (Already in possession of Defendants)

P-35: Defendant, Walmart's Answers to Wisconsin Cheese Group's Request For Production of Documents (Already in possession of Defendants)

P-36: Plaintiffs Medical Bills (Already in possession of Defendants)

P-37: CMS Medicare Lien: \$59,701.51.

P-38: Lehigh Valley Hospital Records (Already in possession of Defendants) not attached due to size).

P-39 Deposition Transcript of Walmart Corporate Designee (To be taken on April 15, 2019).

P-40 All Walmart receipts to be produced by Walmart in delayed Deposition.

P-41 Pa Department of Health Records (Already in possession of Defendants)

P-42 Records from Department of Health and Human Services Center for Disease Control.

P-43 Records from U.S. Food & Drug Administration (Already in possession of Defendants)

P-44 Yehia Y. Mishriki, M.D. Records (Already in possession of Defendants; deposition pending upon the availability of the doctor)

P-45 Kristin Baracalli, D.O. Records (Already in possession of Defendants; deposition pending upon the availability of the doctor)

Plaintiffs, Noujoud Achkar and Joseph Achkar, reserve the right to introduce any and all exhibits nominated/identified by all Defendants; and Plaintiffs reserve the right to supplement this list if and when new discoverable material becomes available prior to trial. Medical depositions are awaiting doctor availability. Professor Sulzinski will appear in person to testify.

**VI. LEGAL ISSUES**

1. WHETHER PLAINTIFF HAS PROVEN BY A PREPONDERANCE THAT SHE ATE LISTERIA TAINTED CHEESE PRODUCED BY WISCONSIN CHEESE AND SOLD TO PLAINTIFF BY WAL-MART?
2. WHETHER PLAINTIFF IS ENTITLED TO A DIRECTED VEDICT ON STRICT LIABILITY?
3. WHETHER DEFENDANT , WAL-MART, IS LIABLE FOR BOTH COMPENSATORY AND PUNITIVE BECAUSE IT SOLD THE CHEESE PRODUCT AFTER THE "SELL BY" DATE?

**VII. OBJECTIONS TO TRIAL EXHIBITS**

Plaintiff has not yet seen a final list of Defendants' trial exhibits.

**VIII. REPORT/CURRICULUM VITAE OF ALL EXPERTS**

See attached report and Curriculum Vitae of Michael A. Sulzinski, Ph.D.

**THE ORLOSKI LAW FIRM**

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Richard J. Orloski  
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**CERTIFICATE OF SERVICE**

I, Richard J. Orloski, hereby certify that I served a true and correct copy of the foregoing document upon the following person(s) by electronic filing, on the date and time indicated by the Court, addressed as follows:

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